

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ESTEBAN R. GARCIA,

Plaintiff,

vs.

CHRISTOPHER C. KIRK, *et al.*,

Defendants.

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CIVIL ACTION H-05-760

MEMORANDUM ON DISMISSAL

The Plaintiff has not responded to the Court's order that he "submit a new *In Forma Pauperis* application." [Docket Entry No. 4]. Plaintiff was advised in this Court's order that "[f]ailure to comply timely will result in the dismissal of this case without further notice."

The Plaintiff's failure to pursue this action forces this Court to conclude that he lacks due diligence. Therefore, under the inherent powers necessarily vested in a court to manage its own affairs, this Court determines that dismissal for want of prosecution is appropriate. *See* Fed.R.Civ.P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626 (1962); *Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997). Dismissal is also appropriate for

failure to comply with a court order. The Plaintiff is advised, however, that upon a proper showing, relief from this order may be granted in accordance with Fed.R.Civ.P. 60(b). *See Link*, 370 U.S. at 635.

Accordingly, it is ORDERED that this action be DISMISSED without prejudice for want of prosecution and for failure to comply with an order of this Court. All pending motions and other requests for relief are DENIED.

SIGNED at Houston, Texas, on this 30th day of August, 2005.



DAVID HITTNER

United States District Judge